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SC PUBLIC SERVICE
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September 2, 2005

VIA HAND DELIVERY

The Honorable Charles L. A. Terreni
Chief Clerk and Administrator
The Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Docket No. 2005-210-E – Application of Duke Energy Corporation for
Authorization to Enter into a Business Combination Transaction with Cinergy
Corporation - - **Opposition to Petition to Intervene of the Electric
Cooperatives of South Carolina Inc., Central Electric Power Cooperative
Inc., and Saluda River Electric Cooperative, Inc.**

Dear Mr. Terreni:

Duke Energy Corporation (“Duke”), through counsel, writes in response to the
Petition to Intervene of the Electric Cooperatives of South Carolina Inc., Central
Electric Power Cooperative, Inc., and Saluda River Electric Cooperative, Inc
(hereinafter together, “The Cooperatives,” and the “Cooperatives’ Petition”).

Duke strongly opposes the Cooperatives’ intervention in this matter and
respectfully requests that this Commission deny their Petition to Intervene, for the
reasons set out below.

First and foremost, the Cooperatives have no legitimate standing to intervene
here. They are all either wholesale or interstate transmission customers of Duke (or
representatives of such customers), whose rates and service from Duke are subject to
the exclusive jurisdiction of the Federal Energy Regulatory Commission (“FERC”).
Therefore, if they have interests that they wish to protect by intervention, the proper
forum in which to do so is in the proceedings on the application that Duke and Cinergy
Corporation have filed with FERC for its approval of the merger. In this connection
it is noteworthy that on two prior occasions Duke has applied to this Commission for

merger approvals,¹ and none of the Cooperatives sought to intervene in either of those cases, although their status as wholesale and transmission customers of Duke was the same then as it is now.

The interests of Duke's retail customers, whose rates and service are within the exclusive jurisdiction of this Commission, are ably and adequately protected by the Office of Regulatory Staff, and any of those retail customers who wish to pursue legitimate interests by separate intervention may do so. But to permit any and all of Duke's wholesale and transmission customers or their representatives to intervene in this proceeding, as well as before the FERC, would at best lead to needless and costly duplication of process, including discovery, and at worst create the potential of conflicting results on the same or similar issues.

In addition, the Cooperatives' Petition should be denied because they have not set forth legally sufficient grounds to justify intervention in this matter. The Cooperatives' Petition (i) is legally insufficient, (ii) is impermissibly vague, (iii) contains alleged grounds that are pretextual, (iv) contains on its face inchoate allegations (v) is conclusory, without any proper factual basis, and (vi) is factually incorrect.

The Petition purports to state grounds to justify intervention only in its numbered paragraphs 7, 8, and 9. Accordingly, Duke responds below to the above denominated paragraphs.

(Cooperatives' Petition)

7. "The ECSC, Central, Saluda and their members have a direct and material interest in the issues to be addressed and resolved by the Commission in the docket and the interest of their members are not adequately represented by the current parties to this proceeding."

(Duke's Response)

The Cooperatives' Petition states that they have a, "[D]irect material interest in the issues to be addressed...", however, the Petition does not state what material interest exists to support their Petition. Furthermore, the Petition fails to explain how the material interest would relate to this Docket or justify intervention. Also, as we have shown above, the Petitioners have no legitimate interest that can be properly addressed in this proceeding.

(Cooperatives' Petition)

8. "The record reflects that this matter may deal with retail rates and charges that could ultimately affect Petitioners and that given the state of

¹ In 1996 in the PanEnergy transaction (Docket No.96-383-E) and in 2001 in the Westcoast transaction (Docket No. 2001-441-E).

the record at this stage of the proceedings, ECSC, Central and Saluda lack sufficient information to fully develop and state their position in this proceeding at this time."

(Duke's Response)

The Cooperatives' Petition is impermissibly vague. Duke notes the indefinite, "...this matter **may** deal with retail rates and charges..." (emphasis supplied) On the contrary, Duke's Application, as filed in this Docket, shows on its face that Duke does not seek to change its retail rates and charges.

(Cooperatives' Petition)

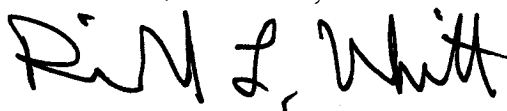
9. "Granting Petitioners' request to be made parties of record in this proceeding is in the public interest, is consistent with the policies of the Commission in encouraging maximum public participation in issues before it, and should be allowed so that a full and complete record addressing the views and concerns of ECSC, Central, and Saluda and its members can be developed."

(Duke's Response)

The Cooperatives make the purely conclusory statement that, "... [Cooperatives' Petition] is in the public interest." No proper factual support is stated or claimed to support that allegation. However, it cannot be in the public interest to permit intervention by persons having no legitimate interest to protect in this forum, and whose interests, if any, can be fully protected in another forum.

Therefore, in addition to their fatal lack of standing, a fair reading of the three operative paragraphs of Cooperatives' Petition does not provide legally sufficient grounds to justify this Commission granting intervention in this Docket. Accordingly, Duke requests that this Commission inquire into this matter and issue its Order denying the Cooperatives' Petition to Intervene in this Docket.

Respectfully submitted,



William F. Austin
Richard L. Whitt

RLW/dss

cc: Shannon Bowyer Hudson, Esquire
Scott Elliot, Esquire
Marcus A. Manos, Esquire

RE: Docket No. 2005-210-E – Application of Duke Energy Corporation for Authorization to Enter into a Business Combination Transaction with Cinergy Corporation - - Opposition to Petition to Intervene of the Electric Cooperatives of South Carolina Inc., Central Electric Power Cooperative Inc., and Saluda River Electric Cooperative, Inc.

CERTIFICATE OF SERVICE

I, Rhonda G. Wimberly, employee of Austin Lewis Rogers, P.A., hereby certify that I caused copies of the Duke Power's Opposition to Petition to Intervene of the Electric Cooperatives of South Carolina Inc., Central Electric Power Cooperative Inc., and Saluda River Electric Cooperative, Inc. to be hand delivered and addressed as follows on this date, to the individuals shown below:

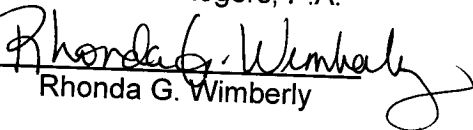
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This the 2nd day of September, 2005.

Austin Lewis and Rogers, P.A.

By: 
Rhonda G. Wimberly